

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JIMMIE LEWIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 04-1350-GMS
	)	
DR. SYLVIA FOSTER, STAFF	)	
MEMBERS, THE DELAWARE	)	
PSYCHIATRIC CENTER and	)	
MR. GREY,	)	
	)	
Defendants.	)	

**DEFENDANT GRAY’S MEMORANDUM OF POINTS AND  
AUTHORITIES IN REPLY TO ANSWER TO MOTION TO DISMISS**

COMES NOW, Defendant Robert Gray, by and through undersigned counsel, and responds to Plaintiff’s November 10, 2005 Answer to Defendant’s Motion to Dismiss (Docket No. 37) as follows:

1. Defendant filed a Motion to Dismiss Plaintiff’s Complaint for failure to state a claim on or about August 5, 2005.
2. Without leave of Court, Plaintiff filed an Amended Complaint on or about August 26, 2005 (Docket No. 26). The Court has never granted leave to file an amended Complaint and no Amended Complaint has ever been served upon Defendant Gray.
3. Plaintiff responded to Defendant’s Gray’s Motion only by citing his Amended Complaint, which he filed to “cure the deficiencies” in his Complaint. *See* ¶1 of Plaintiff’s Answer (Docket No. 37).
4. Therefore, the Court should not consider the August 26 Amended Complaint in deciding this Motion to Dismiss. The Motion should be granted based on the Complaint, which even Plaintiff concedes was deficient, and the Memorandum of Points and Authorities that accompanied the Motion

5. Even assuming, *arguendo*, that the Court were to consider Plaintiff's Amended Complaint in deciding this Motion to Dismiss, the Amended Complaint should be dismissed since it does not cure the deficiencies of the Complaint. The argument contained in the Memorandum of Points and authorities is fully applicable to defeat the Amended Complaint. Plaintiff mentions Defendant Gray on pages 29 and 30, alleging that Defendant Gray reached for his bag of M & Ms candy, grabbed Plaintiff, and tried to tackle him. These allegations are insufficient to withstand a Motion to Dismiss.

6. As argued in Defendant Gray's Memorandum of Points and Authorities, Plaintiff has failed to identify any constitutionally or statutorily protected right of which he was deprived by any action of defendant, in either the Complaint or the Amended Complaint.

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

/s/ A. Ann Woolfolk  
A. Ann Woolfolk, #2642  
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Attorney for Defendant Robert Gray

DATE: November 18, 2005

***CERTIFICATE OF SERVICE***

The undersigned certifies that on November 18, 2005, she electronically filed the attached Motion to Dismiss with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Cynthia G. Beam, Esq., #2565  
Reger Rizzo Kavulich & Darnell, LLP  
1001 Jefferson Plaza, Suite 202  
Wilmington, DE 19801

and that she caused two copies of the document to be mailed by United States Postal Service to the following non-registered participant:

Jimmie Lewis  
H.R.Y.C.I.  
P.O. Box 9561  
Wilmington, DE 19809

/s/ A. Ann Woolfolk  
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